

Pension Benefit Guaranty Corporation

75-58

October 3, 1975

REFERENCE:

[*1] 4021. Plans Covered

OPINION:

This is in response to your inquiry concerning the status of the * * *

("the Plan"), discussed in your letters of September 3 and 8, 1975 and at our meeting on September 24. You suggest that the Plan does not promise a fixed benefit and therefore is not covered by the termination insurance provisions of the Employee Retirement Income Security Act of 1974 ("the Act"), and request a determination from us to that effect.

A review of the Plan's provisions indicates that the Plan is a defined benefit plan covered by Title IV of the Act. In reaching this conclusion I note that Article VIII of the Plan, as amended effective May 1, 1968 and April 1, 1972, contains specific formulae for computing the benefits payable upon a participant's retirement. Eligible participants have a right to benefits in a specific amount, based upon the formula expressed in Article VIII as of the date of their retirement. The fact that the formula on which the benefits are calculated may be modified by amendment to the Plan, as provided in the first two sentences of Section 4 of Article VIII, does not alter the defined benefit nature of the Plan. At any given time a participant has a defined [*2] benefit entitlement, and a contractual attempt to limit the employer's liability beyond the limit established by the Act would not defeat that entitlement.

Please note that because the Plan is a defined benefit plan for purposes of the termination insurance provisions of the Act, the adoption of an amendment that may reduce benefits is a reportable event under § 4043(b)(2). By definition, if the Plan is converted from one in which participants' benefit rights are fixed and enforceable to one in which the future level of their retirement income is purely speculative, the Plan would have been amended in such a way that benefits "may be decreased." Thus the PBGC must be advised of any Plan modification that would change it from a defined benefit plan to a "target benefit" or defined contribution plan. If the Plan is amended to convert it to an "individual account plan" it would be treated as terminated pursuant to § 4041(f).

Henry Rose
General Counsel